United States Court of Appeals

for the Second Circuit

APPENDIX

77-1238

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

B
P/S

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

LANI M. BROZYNA,
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

APPENDIX OF DEFENDANT-APPELLANT

McDONOUGH, BOASBERG, HAMSHER, HELLER AND RAMM,
Attorneys for Defendant-Appellant,
930 Walbridge Building,
Buffalo, New York 14202.

UNITED STATES COURT OF APPEALS
FILED
SEP 8 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-343-0457

PAGINATION AS IN ORIGINAL COPY

INDEX.

	page
Docket Entries	1
Indictment	5
Notice of Motion Dated May 21, 1975	7
Affidavit of Edward Heller in Support of Motion	8
Affidavit of Kenneth A. Cohen	10
Notice of Motion Dated August 24, 1976	11
Decision and Order	12

STATE OF NEW YORK
U.S. DISTRICT COURT : COUNTY OF ERIE

UNITED STATES OF AMERICA

Plaintiff

-vs-

LANI BROZYNA

Defendant

INDEX TO RECORD ON APPEAL

CRIMINAL NO. 1975-63

1. Indictment.
2. Transcript - appearance before Magistrate; 9/11/74
3. Transcript - appearance before Magistrate; 9/25/74
4. Transcript - appearance before Magistrate; 11/8/74
5. Defendant's pre-trial motion, filed; 5/12/75
6. Government's response: 5/15/75
7. Governments Bill of Particulars; 5/15/75
8. Defendant's omnibus motion, filed; 6/17/75
9. Government's Affidavit of: 6/25/75
10. Transcript of Suppression Hearing of; 8/12/75
11. Order of Curtin, J., filed; 9/ 4/75
12. Jury notes to Court:
13. Defendant's motion for acquittal and new trial:
14. Decision and order of Curtin, J., filed; 4/21/77
15. Judgment and Probation Order;
16. Defendant's Notice of Appeal;
17. Government's Notice of Appeal;

III.

It is hereby stipulated that the above-captioned items, one through seventeen, constitute the Record on Appeal in the within matter.

S/ Edward Heller

EDWARD HELLER
Attorney for Defendant - appellant
Lani Brozyna

EDWARD WAGNER, U.S. Attorney
Attorney for Plaintiffs - Appellants
Richard McClare

Docket Entries.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

CR- 75 -68 !

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U.S.:*
vs.	Edward Wagner
LANI M. BROZYNA	
In connection with the acquisition of a firearm from a licensed dealer, willfully and knowingly furnishing a false identification likely to deceive such dealer (Ct.1) in violation of Title 18, USC, Sec. 922(a)(6) & 924(a); Having previously been arrested on a felony and admitted to bail, wilfully failing to appear as required before the committing magistrate, in violation of Title 18, USC, Sec. 3150 (Ct.2)	*For Defendant:* Edward Heller(assigne
Offenses: 8/29/74, 11/15/74 2 Cts.	

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed APR 5 1975	Clerk					
J.S. 3 mailed	Marshal					
Title 18 Sections:	Docket fee					
Title 922(a)(6), 924(a) 3150						
Sec.						

DATE 1975	PROCEEDINGS
Mar.13	Filed Indictment
Mar.13	J.S. 2 made
Mar. 20	Filed Magistrate's docket, warrant of arrest, complaint, and affidav and $2500 recognizance bond
Apr. 1	Filed Warrant of removal from U.S District Court for the Central District of California
Apr. 4	Filed $2,500, recognizance bond for deft.
Apr. 11	Filed cy. 5 of CJA 20--order appointing Edward Heller as counsel fo deft. CURTIN, J.
April 4	Deft. present with counsel, enters a plea of not guilty to the indictment. Deft. is released upon executing a recog. bond. in the amt. of $2,500.
Apr. 15	Proceedings before the Magistrate - Discovery motions are to be filed by 5/12/1975;The Govt. is to respond by 5/16/1975 and argument is scheduled for 5/20/75 at 10:30 a.m.
May 12	Filed deft's notice of motion for inspection of Grand Jury minutes, dismissal of indictment, Bill of Particulars, disclosure, Brady material, etc. ret. 5/20/75 before the Magistrate
May 13	Proceedings before the Magistrate - No appearance for the deft. Argument as scheduled on 5/20/75

Docket Entries.

DATE 1975	PROCEEDINGS
May 15	Filed Govt's Bill of Particulars
May 15	Filed Govt's response to the defendant's pre-trial motion for discov
May 20	Proceedings before the Magistrate - Oral argument on deft's motions Motions granted in part, denied in part. Discovery is complete.
May 23	Filed Govt's motion to move action for trial
June 17	Filed deft's notice of motion for inspection of the Grand Jury minut dismissal of the indictment, or separate trial on each count, ret. 6/30/75
June 26	Filed Govt's memorandum Of Law
June 26	Filed Affidavit by Kenneth A. Cohen, AUSA, that the defendant had n completed purchasing the firearms referred to in Count I of th Indictment
June 30	Deft's motion to inspect grand jury minutes, etc.Government filed an and affidavit in response to deft's motion. Adj. 7/14/75
July 14	Motion for a severance or to dismiss Indictment. Decision reserved. Motion for a transcript of the Magistrate's proceedings. Motion granted. Motion to inspect grand jury minutes. Moti denied. Motion to suppress. Court will hold hearing on thi motion August 12, 1975 at 10:00 a.m.
July 16	Filed order that the defendant be denied inspection of the grand jury minutes in this action; and it further ordered that a hearin be held to determine the admissibility of the defendant's st ments to law enforcement officers of the U.S. Government on August 12, 1975, at 10:00 at Part I, U.S. Courthouse, --CURT
July 14	Filed Order that the transcript of the proceedings before the Magis is necessary for the preparation of this Indictment for tria it is ordered that the Office of the U.S. Magistrate prepare transcript of the proceedings before the Magistrate in the m of U.S. v. Lani M. Brozyna, ,etc, and a copy thereof, and it further ordered that the cost of said transcript(s) shall be borne as follows: the U.S.A. $1.00 per page, Lani M. Brozyna CURTIN,J.
Aug.12	Suppression hearing. Motion by deft. for suppression of evidence denied.
Sept. 4	Filed Order that the oral statements of the Deft. to F.B.I. Agent a agent of the Bureau of Alcohol, Tobacco and firearms, were obtained from her in violation of her constitutional rights and suppression of said statements is hereby denied. --CURTI
Sept. 15	Defts motion for a severance. Adj. to 9-29-75
Sept. 29	Defts motion for a severance. Motion denied. Court orders case pl on ready trial calendar.
Oct. 21	Pre trial meeting held in above case. Case is placed on trial calen
Nov. 4	Filed Ct. Steno's transcript of proceedings held before John T. Cur on 8-12-75
Nov.4	Filed copy 2 CJA 21 voucher for Ct. Reporter. Orig to adm. office payment. in the amt. of $83.75
1976	
June 1	Filed Deft's notice of motion for an order dismissing the Indictmen for lack of a speedy trial, etc., ret. 6/4/76 - pre-trial conference.
June 4	Pre trial conference held. Government is to reply to deft's motion to dismiss because of a lack of a speedy trial by 6/18/76
June 18	Government response due. To be filed today

Docket Entries.

CRIMINAL DOCKET | *U. S. vs* Lani M. Brozyna | 75 | 75-63 | J

Yr. | Docket No. | D

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DEL (a)	(b)	(c)	(
6/25/76	Filed Affidavit by Kenneth A. Cohen, AUSA, in regard to his examination of the Court's file, Magistrate's file and the U.S. Atty's file related to this indictment.				
6/25/76	Filed Govt's memorandum of Law in opposition to defendant's motion for dismissal of the indictment				
7/14/76	Filed order denying deft's motion for dismissal of the indictment. CURTIN, J.				
7/27/76	Govt. moves case ready for trial, whereupon the Court orders jury selection 8/3/76				
8/3/76	Government moves case ready for trial, whereupon the jury is duly empanelled. Trial adj. to week of 8/10/76				
8/11/76	Filed Transcript of the proceeding before the Magistrate on 11/8/74				
8/11/76	Filed Transcript of the proceeding before the Magistrate on 9/11/74				
8/11/76	Filed Transcript of the proceeding before the Magistrate on 9/25/74				
8/16/76	Filed cy. of letter to Edward Heller, dated 8/13/76, from Edward Wagner, AUSA re a hearing on photospread				
8/17/76	Filed subpoena - Dorothy Bernys, served 8/13/76				
8/18/76	Suppression hearing. Motion is denied.				
8/18/76	Trial continues from 8-3-76. Trial is adj. until 8-19-76.				
8/19/76	Filed three subpoenas - Joseph Cali, Rosemary Veres, and Det. Harry M. Miller served 8-17-76.				
8/19/76	Trial cintinues from yesterday. Deft moves to dismiss the indictment. Desision reserved. Govt. moves to amend the indictment. Motion denied. Trial is adj. until 8-20-76				
8/20/76	Trial continues from yesterday with same appearances & jury. Court rules on requests to charge. After listening to a charge from his honor, the Judge, the jury retires to deliberate upon their verdict. Jury returns with the following verdict: Deft. is guilty on counts 1 and 2 as charged in t he indictment. Sentence is deferred until 10-12-76 Oral argument on motions of deft will be heard on 9-17-76. Briefs to be submitted on 9-13-76. Deft. continued on bail.				

(over)

Docket Entries.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DE (a)	(b)	(c)
8/31/76	Filed Deft's notice of motion for a directed verdict of acquittal, etc., ret. 9/17/76 per order of Judge Curtin, endorsed on cover letter.			
9/13/76	Ret. date for briefs. Court informed briefs to be filed tod			
9/14/76	Filed Govt's memorandum of Law in Opposition to the Defendant's motion for a directed verdict of acquittal or a new trial			
10/1/76	Oral argument on motion for a new trial. Submitted. Sentence adj. until after motion is decided.			
10/12/76	For sentence. Adj. until after the resolution of a motion by the deft. now before the Court.			
4/21/77	Filed Decision & Order. Motion for judgment of acquittal on Count I is granted, (defendant's motion). Defendant's motion for severance was denied. The motion for a new trial on Count II is denied. Curtin, J. (ccs: USA & Edward Heller, Esq.)			
5/2/77	Deft. is sentenced as follows: Imposition of sentence is suspended and deft. is placed on probation for a period of 1 year. This is on Count 2 of the indictment.			
5/6/77	Filed copy 2 CJA 20 voucher in the amt. of $1000.00 orig. to Adm. Office for payment. CURTIN, J.			
5/6/77	Filed Judgment and order of probation.			
5/10/77	Filed Govt's notice of appeal			
5/10/77 5/11/77	Filed defense Notice of Appeal. copy of notice of appeal mailed to CCA and defense attorney, along with copy of docket entries.			
5/11/77	Copy of Notice of Appeal mailed to the U.S. Atty., defense counsel, and the CAA with statement of docket entries. (defense Notice of Appeal)			
	~~CLOSED~~			

Interval | Start Date | Ltr.

Indictment.

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

-vs-

LANI M. BROZYNA

NOVEMBER 1974 Session

No. CR75-63

Vio. T. 18, U.S.C., Sections 922(a)(6), 924(a) and 3150

COUNT I

The Grand Jury Charges:

On or about the 29th day of August, 1974, in the City of Buffalo, Western District of New York, LANI M. BROZYNA, in connection with the acquisition of a firearm from a licensed dealer in firearms, willfully and knowingly furnished and exhibited a false, ficticious and misrepresented identification intended and likely to deceive such dealer with respect to a material fact as to the lawfulness of the sale of such firearm pursuant to Chapter 44, Title 18, United States Code, in that she represented herself to be Dorothy Bernys; all in violation of Sections 922(a)(6) and 924(a), Title 18, United States Code.

COUNT II

The Grand Jury Further Charges:

On or about the 15th day of November, 1974, in the City of Buffalo, Western District of New York, LANI M. BROZYNA, having previously been arrested on a charge of

violating Title 18, United States Code, Sections 922(a)(6) and 924(a), a felony, and having been admitted to bail pursuant to the provisions of Title 18, United States Code, Section 3146(a), for appearance before the United States Magistrate for a preliminary hearing in Case No. 74-182M, entitled United States v. LANI M. BROZYNA, wilfully did fail to appear as required before the aforementioned committing magistrate; all in violation of Title 18, United States Code, Section 3150.

/s/ R S A
RICHARD J. ARCARA
United States Attorney

A TRUE BILL:

Foreman

Notice of Motion Dated May 21, 1975.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Plaintiff

-vs-

LANI M. BROZYNA.

Defendant

NOTICE OF MOTION

CR-75-63

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of EDWARD HELLER, duly sworn to on the 21st day of May, 1975, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court on the 16th day of June, 1975, at 10:00 A.M. in the forenoon of said day, or as soon thereafter as counsel can be heard, at a term of this Court in the United States Courthouse at Buffalo, New York, for an Order permitting inspection of the Grand Jury Minutes and dismissal of the Indictment herein pursuant to Rule 6 of the Federal Rules of Criminal Procedure, and, in the alternative, granting a separate trial on each Count of the Indictment, and for such other and further relief as to this Court may seem just and proper.

DATED: Buffalo, New York
May 21, 1975

Yours, etc.,

HELLER AND DAMM
Attorneys for Defendant
Office and P.O. Address
1330 Statler Hilton Hotel
Buffalo, New York 14202

TO: RICHARD J. ARCARA
United States Attorney
United States Courthouse
Buffalo, New York 14202

Affidavit of Edward Heller in Support of Motion.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Plaintiff

-vs- AFFIDAVIT

LANI M. BROZYNA

Defendant

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

EDWARD HELLER, being duly sworn, deposes and says as follows:

1. That I have been advised by the Assistant United States Attorney prosecuting this case and, therefore, believe, that the transaction involved here may very well have fallen short of criminal conduct. Count I of the Indictment alleges that the defendant misrepresented her identity in attempting to purchase a firearm from a licensed dealer under circumstances likely to deceive such dealer. It is my understanding that the chronology of events which are alleged to have occurred is such that an inspection of the minutes may very well reveal an insufficiency of fact to sustain the charge.

2. Should the Court determine that Count I of the Indictment is supported by sufficient evidence, I ask that a separate trial be had with respect to each Count of the Indictment on the ground that the only relationship between Count I and

Affidavit of Edward Heller in Support of Motion.

Count II is that Count II arises out of her arraignment on Count I. It would be highly prejudicial for the same jury to be required to pass on the issues raised in the separate counts.

WHEREFORE, your deponent respectfully prays for an Order granting the relief requested herein.

EDWARD HELLER

Sworn to before me this
21st day of May, 1975.

Affidavit of Kenneth A. Cohen.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff	CR. 75-63
-v-	AFFIDAVIT
LANI M. BROZYNA, Defendant	

State of New York)
County of Erie) ss
City of Buffalo)

Kenneth A. Cohen, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the Western District of New York and as such have been assigned the trial of the indictment herein and am familiar with the facts relating thereto.

2. During preliminary discussions of this matter with Edward Heller, the defendant's attorney, I advised him that the defendant had not completed purchasing the firearms referred to in Count I of the indictment.

KENNETH A. COHEN

Subscribed and sworn to before
me this _____ day of June, 1975.

RICHARD E. MELLENGER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 19____

Notice of Motion Dated August 24, 1976.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

NOTICE OF MOTION
CR. NO. 75-63

LEON M. BRZEZIA

Defendant

SIRS:

PLEASE TAKE NOTICE, that pursuant to the Federal Rules of Criminal Procedure, Rule 29, the undersigned will move this Court at a regular term thereof, to be held at the United States Courthouse, Buffalo, New York, on the 17th day of December, 1976 at 9:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard for a directed verdict of acquittal or, in the alternative, a new trial on the ground that:

1. The verdict was contrary to the evidence and the law.

2. The trial of both counts of the indictment to one jury made it impossible for said jury to fairly decide the issues.

DATED: Buffalo, New York
August 24, 1976

Yours, etc.,

McDONOUGH, BOASBERG, HAMSHER,
HELLER AND RAMM
Attorneys for Defendant
Office & P. O. Address
930 Walbridge Building
Buffalo, New York 14202

TO: HON. JOHN T. CURTIN
United States District Court Judge

EDWARD J. JAGNER,
Assistant United States Attorney

Decision and Order.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs- CR-75-63

LAMI M. BROZYNA,

Defendant

APPEARANCES: RICHARD J. ARCARA, ESQ.
United States Attorney
(KENNETH A. COHEN, ESQ. & EDWARD J. WAGNER, ESQ., of Counsel), Buffalo, New York, for the Government.

McDONOUGH, BOASBERG, HAMSHER, HELLER & RAMM
(EDWARD HELLER, ESQ., of Counsel)
Buffalo, New York, for Defendant.

On March 13, 1975, the grand jury returned a two-count indictment charging the defendant with using a false identification "in connection with the acquisition of a firearm" in violation of 18 U.S.C. §§922(a)(6) and 924(a), and with bail jumping in violation of 18 U.S.C. §3150. Subsequently, the defendant was tried and the jury returned guilty verdicts on each count.

During trial I reserved decision on defendant's motion to dismiss on the first count and, following trial,

defendant moved for acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure, or, in the alternative, for a new trial pursuant to Rule 33. In passing on these motions, the evidence must be viewed in the light most favorable to the prosecution.

The pertinent facts may be quickly stated. On August 29, 1974, the defendant entered King's Department Store in Buffalo, New York. After examining a shotgun, she told the clerk that she wanted to purchase it. She showed the clerk a New York State driver's license and two credit cards purportedly identifying her as Mrs. Dorothy Bernys. When the store personnel questioned her use of the charge card to pay for the gun, she left the store without completing the purchase.

Count I of the indictment charges that she willfully furnished false identification "in connection with the acquisition of a firearm." The defendant contends that while the facts developed at trial may indicate an attempted acquisition, they do not show an acquisition, and that therefore the evidence does not support a conviction on the crime charged in the indictment.

§922 provides:

(a) It shall be unlawful--

* * *

> (6) for any person in connection with the acquisition or attempted acquisition of any firearm . . . from a . . . licensed dealer . . ., knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification . . ..
> (Emphasis added).

Before an indictment was voted in this case, the Government had filed a complaint with the Magistrate charging the defendant with a violation of 18 U.S.C. §922(a)(6) and 18 U.S.C. §924(a) for using a false identification "in connection with the attempted acquisition of a firearm" from a federal firearms dealer. It is not clear why the Government changed its position and did not charge her with an attempt in the indictment.

The Government argues that since the defendant had taken all steps necessary on her part to complete the sale and that the sale would have been completed had it not been for the action of the store employees in refusing to

honor the credit card, the facts were sufficient to show that the defendant had used false identification in connection with the acquisition of this firearm. In addition, the Government argues that since the statute is mainly concerned with the use of false identification in connection with the acquisition of a firearm, it was enough to prove that she had used false identification in this transaction.

As to the first argument, the Government's reliance upon contract theory is not persuasive. Until her credit was approved, the defendant had absolutely no right to take the shotgun from the store. That she was permitted to handle it and examine it before the purchase is not enough to conclude that she had acquired the weapon. In Huddleston v. United States, 415 U.S. 814 (1974), the Supreme Court had an opportunity to discuss §922(a)(6). The legislative history of the Gun Control Act of 1968, as the Court explained, provides no explicit definition of the word "acquisition". 415 U.S., at 826. In Huddleston, the Supreme Court defined the word "acquire" to mean simply "to come into possession, control, or power of disposal of," citing Webster's New International Dictionary (3d Ed. 1966,

unabridged), and held that §922(a)(6) applies to the redemption of a firearm from a pawnshop. 415 U.S., at 819-823. However, the Court admonished against "enshrouding [the term 'acquisition'] with an extra-statutory 'legal title' or 'ownership' analysis" as there is "nothing . . . in the statute that justifies the imposition of that gloss." 415 U.S., at 820.

There is no question that in Huddleston, the Supreme Court indicated a willingness to interpret "acquisition" broadly; however, there is no authority expressed there to construe the word "acquisition" to include "attempted acquisition" which is a separately designated offense. United States v. Purlinski, 472 F.2d 84 (8th Cir. 1972), does not support the Government's argument either. In that case the defendant completed a questionnaire a few days after he had paid for and taken possession of a firearm. Even though the questionnaire was prepared a few days later, it was held to be "in connection with the acquisition of" the firearm. However, Purlinski does not support the Government's argument that acquisition also includes an attempted acquisition.

Decision and Order.

Next, the prosecutor argues that pursuant to Rule 31(c) of the Federal Rules of Criminal Procedure the defendant may be found guilty of an attempt to commit the offense charged. See discussion in 8A MOORE'S FEDERAL PRACTICE, ¶31.03, at 31-9 to 31-26 (2d Ed. 1965), and Simpson v. United States, 195 F.2d 721 (9th Cir. 1952). However, in cases like Simpson, the question of attempt was submitted to the jury. In this case, the Government insisted that the facts warranted a finding that the defendant was guilty of the offense charged in the indictment. There was no request that the charge of an attempt be submitted to the jury. If the Government had sought such a request, it would have been appropriate under the circumstances. Berra v. United States, 351 U.S. 131, 134 (1956). But it is necessary that the request be made beforehand. United States v. Whitaker, 447 F.2d 314, 317 (D.C.Cir. 1971).

Under these circumstances, where the statute clearly defines two crimes, one "in connection with the acquisition" and the other in connection with the "attempted acquisition," it is necessary that the defendant know what position the prosecution is taking so that she may adequately prepare her defense. In this case the Government clearly did

not charge an attempt. Perhaps there was an effort to expand the meaning of the verbiage "in connection with the acquisition of." If that is the case, the Government has failed and for that reason the motion for judgment of acquittal on Count I is granted.

The defendant had previously moved for a severance and that motion was denied. Under the circumstances, it appeared to the court that it was not unfair or a violation of the rules to try both counts together. Some evidence admissible on Count II was also appropriate to be heard on Count I. The motion for a new trial on Count II is denied.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: April 21, 1977

AFFIDAVIT OF SERVICE BY MAIL

RE: USA vs Lani M. Brozyna

No. 77-1238

State of New York)
County of Genesee) ss.:
City of Batavia)

I, LaVerne C. Cooley Jr. being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

On the 2nd day of September, 19 77 I mailed ____ copies of a printed Appendix in the above case, in a sealed, postpaid wrapper, to:

10 copies by Air Mail to: A. Daniel Fusaro, Clerk
United States Court of Appeals, Second Circuit
New Federal Court House, Foley Square
New York, New York 10007

2 copies to: Richard J. Arcara, United States Attorney
Att: Edward J. Wagner, Asst. United States Attorney
502 U.S. Courthouse, Buffalo, New York 14202

at the First Class Post Office in Batavia, New York. The package was mailed Special Delivery at about 4:00 P.M. on said date at the request of:

McDonough, Boasberg, Hamsher, Heller & Ramm, Att: Edward Heller, Esq.
930 Walbridge Building, Buffalo, New York 14202

LaVerne C. Cooley Jr.

Sworn to before me this

2nd day of September, 19 77

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 19 79